

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

CIVIL No. 11-1857 (RHK/TNL)

BRENDA SCHMIDT,

PLAINTIFF,

V.

REPORT & RECOMMENDATION

MICHAEL J. ASTRUE, COMMISSIONER OF
SOCIAL SECURITY,

DEFENDANT.

Brenda Schmidt, 501 2nd Avenue South, St. Paul MN 55075, pro se Plaintiff;

Lonnie F. Brian, Assistant United States Attorney, 600 United States Courthouse,
300 South Fourth Street, Minneapolis MN 55415, for Defendant.

This action has been referred to the magistrate judge for report and recommendation to the district court under 28 U.S.C. § 636 and Local Rule 72.2(b). This matter is before the Court, Magistrate Judge Tony N. Leung, on the Order to Show Cause (Docket No. 9). For the reasons set forth below, **IT IS HEREBY RECOMMENDED** that Plaintiff's Complaint (Docket No. 1) be **DISMISSED WITH PREJUDICE**.

On July 8, 2011, Plaintiff Brenda Schmidt filed a Complaint for Judicial Review of Decision of the Commissioner of Social Security (Docket No. 1). On September 22, 2011, Defendant Commissioner of Social Security filed his Answer (Docket No. 6) and a certified copy of the administrative record (Docket No. 7). On December 15, 2011, this Court issued an Order to Show Cause (Docket No. 9), directing that, on or before January 6, 2012, Plaintiff must show

cause why this case should not be dismissed for lack of prosecution. To date Plaintiff has failed reply to the Order to Show Cause and has failed to file and serve a summary-judgment motion and a supporting memorandum.

Pro se litigants are “not excused from complying with substantive and procedural law.” *Brown v. Frey*, 806 F.2d 801, 804 (8th Cir.1986). “If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” Fed. R. Civ. P. 41(b). United States District Court for the District of Minnesota Local Rule 7.2(b)(1) requires that “[w]ithin 60 days after the Commissioner of Social Security serves the answer and administrative record, the plaintiff must file and serve a summary-judgment motion and a supporting memorandum.” In the present case, Plaintiff has failed to comply with United States District Court for the District of Minnesota Local Rule 7.2(b)(1). Plaintiff failed to respond to the Order to Show cause, which apprised Plaintiff that her failure to respond would result in this Court issuing a Report and Recommendation, recommending that this matter be dismissed for Plaintiff’s failure to prosecute her claim. Based upon Plaintiff’s failure comply with the Local Rules and failure to comply with this Court’s Order to Show Cause, this Court concludes that Plaintiff has abandoned her action, and therefore, this action should be dismissed for failure to prosecute.

Based upon the record, **IT IS HEREBY RECOMMENDED** that Plaintiff’s Complaint (Docket No. 1) be **DISMISSED WITH PREJUDICE**.

Dated: January 11, 2012

s/ Tony N. Leung
Magistrate Judge Tony N. Leung
United States District Court
For the District of Minnesota

CIVIL No. 11-1857 (RHK/TNL)

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court and by serving upon all parties written objections that specifically identify the portions of the Report to which objections are made and the basis of each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before **January 26, 2012.**